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Attorney for Defendants/Counterclaimants

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

***Plaintiff***

KARE DISTRIBUTION, INC.,

vs.

***Defendants***

JAM LABELS AND CARDS LLC d/b/a  
A&M CARDS, ARTHUR AARON and  
MARC STEINBERG

CIVIL ACTION NO.: 09-969 (SDW)

**NOTICE OF DEFENDANTS/  
COUNTERCLAIMANTS MOTION FOR A  
SPOILIATION INFERENCE**

**Motion Day: May 21, 2012**

**To:** Ian S. Shainbrown  
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**PLEASE TAKE NOTICE** that on May 21, 2012 at 10:00 AM or as soon thereafter as counsel

may be heard, Defendants and Counterclaimants A&M Cards Worldwide, Inc., Arthur Aaron

and Marc Steinberg will and hereby does move before the Honorable Susan D. Wigenton, United States District Court for the District of New Jersey, 50 Walnut St., Newark, NJ for an Order:

- 1) Granting Defendants/Counterclaimants relief pursuant to Fed. R. Civ. P. 37 and the Court's Inherent Authority for Plaintiff's failure to preserve electronic mail and other electronic documents for discovery by Defendants/Counterclaimants;
- 2) Instructing the jury that such electronic documents, had they been produced, would have demonstrated the existence of a binding contract between the parties and defeated Plaintiff's affirmative defenses
- 3) Adding Douglas O'Brien to the witness list;
- 4) Providing that Plaintiff pay the costs of this motion, including reasonable attorneys' fees;
- 5) And such other relief as the Court shall deem proper.

**PLEASE TAKE FURTHER NOTICE** that in support of their Motion, Defendants/Counterclaimants will rely upon the enclosed Memorandum of Law, Declaration of Avram E. Frisch, Esq., and a Declaration of Marc Steinberg.

**PLEASE TAKE FURTHER NOTICE** that Defendants/Counterclaimants do not request oral argument on this motion.

Respectfully submitted,

Dated: April 17, 2012

THE LAW OFFICE OF AVRAM E. FRISCH LLC

By: /s/ Avram E. Frisch  
Avram E. Frisch, Esq

*Attorney for Defendants/Counterclaimants,  
A&M Cards, Arthur Aaron and Marc  
Steinberg*